

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANTHONY EUGENE VALDIVIA,

Petitioner,

v.

UNKNOWN,

Respondent.

Case No. CV 15-2469 JFW(JC)

ORDER SUMMARILY DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS

I. SUMMARY

On April 3, 2015, Anthony Eugene Validivia (“petitioner”), a state inmate proceeding *pro se*, filed a document which, based on its contents, this Court construes to be a Petition for Writ of Habeas Corpus (the “Petition”) challenging his conviction in Los Angeles County Superior Court.

It plainly appears from the face of the Petition and matters as to which this Court has taken judicial notice that petitioner’s direct appeal of the judgment in the foregoing state case is currently pending, that petitioner’s claims are unexhausted as the California Supreme Court has not yet been presented with them or addressed them, and accordingly, that petitioner is not entitled to federal habeas relief on his claims at this time.

As explained below, the Court must dismiss this action without prejudice pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, which requires a judge promptly to examine a federal habeas petition, and to dismiss it if “it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court. . . .”

II. DISCUSSION

A. Abstention

Except under narrow circumstances, federal courts abstain from interfering with pending state criminal proceedings. See Younger v. Harris, 401 U.S. 37 (1971); see also 28 U.S.C. § 2283. Federal courts may raise Younger abstention sua sponte. See Hoyer v. City of Oakland, 653 F.3d 835, 843 n.5 (9th Cir. 2011). Younger abstention is appropriate if: (1) there are ongoing state judicial proceedings; (2) the proceedings implicate important state interests; and (3) there is an adequate opportunity in the state proceedings to resolve federal questions. Dubinka v. Judges of Superior Ct., 23 F.3d 218, 223 (9th Cir. 1994) (quotations and citations omitted). In this case, all three of the Younger criteria are satisfied.

First, this Court takes judicial notice of the docket of California Court of Appeal, 2nd Appellate District, Case No. B262115, available via <http://appellatecases.courtinfo.ca.gov>, which reflects that petitioner filed a Notice of Appeal in such court on February 24, 2015, and that such appeal remains pending. See Fed. R. Evid. 201; Harris v. County of Orange, 682 F.3d 1126, 1131-32 (9th Cir. 2012) (court may take judicial notice of undisputed matters of public record including documents on file in federal or state courts). Accordingly, it is apparent that there are ongoing state judicial proceedings – a factor which weighs in favor of abstention. See Drury v. Cox, 457 F.2d 764, 764-65 (9th Cir. 1972) (only in most unusual circumstances is defendant entitled to have federal interposition by way of injunction or habeas corpus until after jury comes in, judgment has been appealed from and case concluded in state courts); Roberts v. Dicarlo, 296 F. Supp. 2d 1182,

1 1185 (C.D. Cal. 2003) (Younger abstention appropriate where petitioner's direct
2 appeal pending in state court of appeal).

3 Second, states have an important interest in passing upon and correcting
4 violations of a defendant's rights. See Roberts, 296 F. Supp. 2d at 1185 (citation
5 omitted). Accordingly, this factor likewise weighs in favor of abstention.

6 Third, petitioner has an adequate opportunity in the state proceedings,
7 including state appellate proceedings, to resolve any federal questions that may
8 have arisen during the proceedings. See Middlesex County Ethics Committee v.
9 Garden State Bar Ass'n, 457 U.S. 423, 432 (1982) (where vital state interests
10 involved, federal court should abstain unless state law clearly bars interposition of
11 constitutional claims) (citations and quotations omitted); United States ex rel.
12 Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 253 (9th Cir.
13 1992) (doctrine of abstention precludes party from obtaining relief in federal court
14 simply because party disagrees with result reached by state courts); Pennzoil Co. v.
15 Texaco, Inc., 481 U.S. 1, 15 (1987) (federal court should assume state procedures
16 will afford adequate opportunity for consideration of constitutional claims in
17 absence of unambiguous authority to contrary). Thus, this factor also weighs in
18 favor of abstention.

19 Because all of the Younger requirements are satisfied, this Court must
20 abstain and dismiss this action unless extraordinary circumstances exist. See
21 Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817 n.22
22 (1976) (Younger abstention not discretionary once conditions met); World Famous
23 Drinking Emporium, Inc. v. City of Tempe, 820 F.2d 1079, 1081 (9th Cir. 1987)
24 ("When a case falls within the proscription of Younger, a district court must
25 dismiss the federal action.") (citation omitted). Here, neither the claims asserted by
26 petitioner, nor anything else in the record suggest the existence of extraordinary
27 circumstances. See Younger, 401 U.S. at 45-46. Consequently, this Court must

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1 abstain from considering petitioner's challenges to the state judgment in issue and
2 dismiss this action without prejudice.

3 **B. Exhaustion**

4 A federal court will not grant a state prisoner's petition for writ of habeas
5 corpus unless it appears that the prisoner has exhausted available state remedies.
6 28 U.S.C. § 2254(b), (c); Baldwin v. Reese, 541 U.S. 27, 29 (2004); O'Sullivan v.
7 Boerckel, 526 U.S. 838, 842 (1999); Park v. California, 202 F.3d 1146, 1150 (9th
8 Cir.), cert. denied, 531 U.S. 918 (2000). "For reasons of federalism, 28 U.S.C.
9 § 2254 requires federal courts to give the states an initial opportunity to correct
10 alleged violations of its prisoners' federal rights." Kellotat v. Cupp, 719 F.2d
11 1027, 1029 (9th Cir. 1983) (citation omitted).

12 Exhaustion requires that the prisoner's contentions be fairly presented to the
13 highest court of the state. Davis v. Silva, 511 F.3d 1005, 1008 (9th Cir. 2008)
14 (citation omitted); James v. Borg, 24 F.3d 20, 24 (9th Cir.), cert. denied, 513 U.S.
15 935 (1994). A claim has not been fairly presented unless the prisoner has
16 described in the state court proceedings both the operative facts and the federal
17 legal theory on which his claim is based. See Duncan v. Henry, 513 U.S. 364, 365-
18 66 (1995) (per curiam); Anderson v. Harless, 459 U.S. 4, 6 (1982) (per curiam);
19 Scott v. Schriro, 567 F.3d 573, 582 (9th Cir.) (per curiam), cert. denied, 558 U.S.
20 1091 (2009); Weaver v. Thompson, 197 F.3d 359, 364 (9th Cir. 1999).

21 A federal court may raise a habeas petitioner's failure to exhaust state
22 remedies sua sponte. Stone v. City and County of San Francisco, 968 F.2d 850,
23 855-56 (9th Cir. 1992), cert. denied, 506 U.S. 1081 (1993). Petitioner has the
24 burden of demonstrating he has exhausted available state remedies. See, e.g.,
25 Williams v. Craven, 460 F.2d 1253, 1254 (9th Cir. 1972) (per curiam); Rollins v.
26 Superior Court, 706 F. Supp. 2d 1008, 1011 (C.D. Cal. 2010).

27 In the present proceeding, petitioner affirmatively represents that this matter
28 is pending on appeal and, as noted above, the docket of his case in the California

1 Court of Appeal reflects that it remains pending in such court. The Court further
2 takes judicial notice of the dockets of the California Supreme Court, available via
3 <http://appellatecases.courtinfo.ca.gov>, which contain no record of petitioner having
4 sought relief in such court. Accordingly, it plainly appears from the face of the
5 Petition, as well as matters as to which the Court has taken judicial notice, that
6 petitioner cannot meet his burden to demonstrate that his claims have been
7 exhausted.

8 Although it is clear that the California Supreme Court has not been
9 presented with and has not addressed petitioner's claims, the exhaustion
10 requirement may nonetheless be satisfied if petitioner's claims are clearly
11 procedurally barred under state law. See Castille v. Peoples, 489 U.S. 346, 351-52
12 (1989); Johnson v. Zenon, 88 F.3d 828, 831 (9th Cir. 1996). In this case,
13 particularly given the pendency of the state appeal in the Court of Appeal, it is not
14 at all "clear" that the California Supreme Court would deem petitioner's claims
15 procedurally barred under state law if he were to raise them on direct appeal or in a
16 habeas petition in the California Supreme Court. See In re Harris, 5 Cal. 4th 813,
17 825 (1993) ("[H]abeas corpus has become a proper remedy in this state to
18 collaterally attack a judgment of conviction which has been obtained in violation of
19 fundamental constitutional rights.") (citations omitted); People v. Sorenson, 111
20 Cal. App. 2d 404, 405 (1952) (claims that fundamental constitutional rights have
21 been violated may be raised by state habeas petition). However, this Court
22 expresses no opinion regarding whether consideration of petitioner's claims might
23 be foreclosed by the principles discussed in In Re Clark, 5 Cal. 4th 750, 763-87
24 (1993). The California Supreme Court should evaluate the matter in the first
25 instance. Even if an applicable state procedural bar exists, the California Supreme
26 Court nevertheless might choose to reach the merits of petitioner's claims. See,
27 e.g., Park, 202 F.3d at 1151-52.

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1 Once, as in this case, a Court determines that a habeas petition contains only
2 unexhausted claims, it may dismiss the petition for failure to exhaust. Rasberry v.
3 Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006). Accordingly, because the Petition in
4 this case is wholly unexhausted, dismissal thereof on this ground is also
5 appropriate.

6 **III. ORDER**

7 IT IS THEREFORE ORDERED that the Petition is dismissed without
8 prejudice and that Judgment be entered accordingly.

9 DATED: April 8, 2015

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11 
12 HONORABLE JOHN F. WALTER
UNITED STATES DISTRICT JUDGE

13 Presented by:¹
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16 _____/s/
17 Honorable Jacqueline Chooljian
18 UNITED STATES MAGISTRATE JUDGE
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25 _____
26 ¹Pursuant to Local Rule 72-3.2, the Magistrate Judge promptly shall examine a petition
27 for writ of habeas corpus, and if it plainly appears from the face of the petition and any exhibits
28 annexed to it that the petitioner is not entitled to relief, the Magistrate Judge may prepare a
proposed order for summary dismissal and submit it and a proposed judgment to the District
Judge.